AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

THE NATIONAL ARCHIVES

FEDERAL REGISTER

OF THE UNITED STATES 1934

VOLUME 3 NUMBER 167

Washington, Friday, August 26, 1938

Rules, Regulations, Orders

TITLE 25—INDIANS

OFFICE OF INDIAN AFFAIRS

BOUNDARIES OF WIND RIVER MOUNTAIN ROADLESS AREA

AUGUST 9, 1938.

MR. FORREST R. STONE,
Supt., Wind River Agency.

DEAR MR. STONE: Reference is made to your communications of May 17, June 13 and July 7 recommending a revision of the description of the Wind River Mountain Roadless Area established by Departmental Order No. 486, dated October 25, 1937.[1]

You state that the description of the area as set forth in the order and shown on the map does not conform to the boundaries as established in the field by Mr. Robert Marshall, former Director of Forestry, Mr. George M. Nyce, Regional Forester, and yourself. You also direct attention to the fact that the boundaries as now defined include accessible timber resources required by the Indians for fuel and timber products; and embrace a ranger station, existing roads and other improvements.

An examination of the record indicates that the description as set forth in the order was not definite with respect to the north boundary of the area; and that as a result thereof a straight line was projected on the map between the most northerly points on the east and west boundaries, instead of passing through Bold Mountain as intended.

Accordingly the description of the boundaries of the Wind River Mountain Roadless Area is hereby amended to read as follows:

Starting at the south ¼ corner of Section 22, T. 2 S., R. 3 W., on the south boundary of the diminished Wind River Reservation; thence northerly approximately ½ mile to Hobbs Peak; thence in a northerly direction along the divide between Moccasin Creek and Sand Creek to the ¼ corner between Sections 28 and 33, T. 1 S., R. 3 W.; thence north 1 mile to the ¼ corner between Sections 21 and 28; thence west 2½ miles to the southwest corner of Section 19, T. 1 S., R. 3 W.; thence north along range line to the Wind River base line; thence west along base line 1 mile to the southwest corner of Section 36, T. 1 N., R. 4 W.; thence north 10½ miles to the ¼ corner of Sections 11 and 12, T. 2 N., R. 4 W.; thence west 6½ miles to the center of Section 11, T. 2 N., R. 5 W.; thence on a straight line in a northwesterly direction to the top of Bold Mountain; thence on a straight line in northwesterly direction to the point where the north line of Section 15, T. 4 N., R. 6 W., intersects the western boundary of the reservation; thence south, southeasterly and east along the reservation boundary to point of beginning.

Reference to the description of the boundaries as amended and the map which is attached hereto[2] will disclose the fact that the change recommended by your office in the east boundary of the area in Townships 1 and 2 South, Range 3 West, has also been authorized and that it now follows the well defined ridge which passes through Sections 22, 15, 9 and 4, T. 2 S., R. 3 W.; and Sections 33 and 28, T. 1 S., R. 3 W.

Sincerely yours,

WILLIAM ZIMMERMAN, Jr.,
Assistant Commissioner.

Approved, August 13, 1938.

E. K. BURLEW,
Acting Secretary of the Interior.

[F. R. Doc. 38-2495; Filed, August 24, 1938; 3:23 p. m.]

[1] 3 F. R. 708 DI.

[2] Filed as a part of the original document with the Division of the Federal Register, The National Archives.

CONTENTS

RULES, REGULATIONS, ORDERS

NOTICES

TITLE 26—INTERNAL REVENUE

BUREAU OF INTERNAL REVENUE

[T. D. 4856]

INCOME TAX

REGULATIONS RELATING TO THE MITIGATION OF THE EFFECT OF LIMITATION AND OTHER PROVISIONS IN INCOME TAX CASES

To Collectors of Internal Revenue and Others Concerned:

Pursuant to section 820 of the Revenue Act of 1938, enacted May 28, 1938 (Public, No. 554, Seventy-fifth Congress, Chapter 289, third session), section 3447

FEDERAL REGISTER

Published by the Division of the Federal Register, The National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. L. 500), under regulations prescribed by the Administrative Committee, with the approval of the President.

The Administrative Committee consists of the Archivist or Acting Archivist, an officer of the Department of Justice designated by the Attorney General, and the Public Printer or Acting Public Printer.

The daily issue of the FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1 per month or $10 per year; single copies 10 cents each; payable in advance. Remit by money order payable to Superintendent of Documents, Government Printing Office, Washington, D. C.

Correspondence concerning the publication of the FEDERAL REGISTER should be addressed to the Director, Division of the Federal Register, The National Archives, Washington, D. C.

of the United States Revised Statutes, and other provisions of the internal revenue laws, the following regulations, with respect to the mitigation of the effect of limitation and other provisions in income tax cases, are hereby prescribed, various sections or subsections of the internal revenue laws applicable thereto being quoted in, and made a part of, such regulations:

ART. 820–1. *Purpose and scope of section 820.*—Section 820 provides for correction of the effect of certain types of errors specified in section 820 (b) and articles 820 (b)–1 to 820 (b)–5, when one or more provisions of the internal revenue laws, such as the statute of limitations, would otherwise prevent such correction. Corrections are authorized under section 820 only when the Commissioner, if the correction would result in an allowance of a refund or credit for the year with respect to which the error was made, or the taxpayer, if the correction would result in an additional assessment for such year, has maintained a position inconsistent with the error. No correction is permissible unless the inconsistent position is adopted by a determination made on or after August 27, 1938. (See section 820 (a) and articles 820 (a)–1 to 820 (a)–3, inclusive, for definition of the term "determination.")

SECTION 820 (A) (1) (A) OF THE REVENUE ACT OF 1938

SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*—(a) *Definitions.*—For the purpose of this section—

(1) Determination.—The term "determination under the income tax laws" means—

(A) A closing agreement made under section 606 of the Revenue Act of 1928, as amended;

* * * * *

Such term shall not include any such agreement made * * * prior to ninety days after the date of the enactment of this Act.

SECTION 901 OF THE REVENUE ACT OF 1938, IN PART

SEC. 901. *Definitions.*—(a) When used in this Act—

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(2) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(3) The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this Act, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

* * * * *

(6) The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

* * * * *

(11) The term "Secretary" means the Secretary of the Treasury.

(12) The term "Commissioner" means the Commissioner of Internal Revenue.

* * * * *

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

SECTION 606 (A) AND (B) OF THE REVENUE ACT OF 1928, AS AMENDED BY SECTIONS 801 AND 802 OF THE REVENUE ACT OF 1938

SEC. 606. *Closing agreements.*—(a) *Authorization.*—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period.

(b) *Finality of agreements.*—If such agreement is approved by the Secretary, the Under Secretary, or an Assistant Secretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

ART. 820 (a)–1. *Closing agreement as a determination.*—For the purposes of section 820, a determination may take the form of a closing agreement authorized by section 606 of the Revenue Act of 1928, as amended. Such an agreement may relate to the total tax liability of the taxpayer for a particular taxable year or years or to one or more separate items affecting such liability. If it becomes necessary or desirable to effect a determination in order to obtain or accelerate an adjustment authorized by section 820, a closing agreement may be used for such purpose whenever a taxpayer and the Government have concurred in the disposition of an item or items. A closing agreement becomes final within the meaning of section 820 on the date of its approval by the Secretary, the Under Secretary, or an Assistant Secretary.

SECTION 820 (A) (1) (B) OF THE REVENUE ACT OF 1938

SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*—(a) *Definitions.*—For the purpose of this section—

(1) *Determination.*—The term "determination under the income tax laws" means—

(B) A decision by the Board of Tax Appeals or a judgment, decree, or other order by any court of competent jurisdiction, which has become final; * * *

* * * * *

Such term shall not include any * * * decision, judgment, decree, or order which has become final * * * prior to ninety days after the date of the enactment of this Act.

ART. 820 (a)–2. *Decision by Board or Court as a determination.*—A determination may take the form of a decision by the Board of Tax Appeals or a judgment, decree, or other order by any court of competent jurisdiction, which has become final.

The date upon which a decision by the Board of Tax Appeals becomes final is prescribed in section 1005 of the Revenue Act of 1926, as amended.

The date upon which a judgment of a court becomes final must be determined upon the basis of the facts in the particular case. Ordinarily, a judgment of a United States District Court becomes final upon the expiration of the time allowed for taking an appeal, if no such appeal is duly taken within such time; and a judgment of the United States Court of Claims becomes final upon the expiration of the time allowed for filing a petition for certiorari if no such petition is duly filed within such time.

SECTION 820 (A) (1) (C) OF THE REVENUE ACT OF 1938

SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*—(a) *Definitions.*—For the purpose of this section—

(1) *Determination.*—The term "determination under the income tax laws" means—

(C) A final disposition by the Commissioner of a claim for refund. For the purposes of this section a claim for refund shall be deemed finally disposed of by the Commissioner—

(i) as to items with respect to which the claim was allowed, upon the date of allowance of refund or credit or upon the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and

(ii) as to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the Commissioner in reduction of the refund or credit, upon expiration of the time for instituting suit with respect thereto (unless suit is instituted prior to the expiration of such time).

Such term shall not include any * * * claim for refund finally disposed of, prior to ninety days after the date of the enactment of this Act.

ART. 820 (a)–3. *Final disposition of claim for refund as a determination.*—A

determination may take the form of a final disposition of a claim for refund. Such disposition may result in a determination with respect to two classes of items, i. e., items included by the taxpayer in a claim for refund and items applied by the Commissioner to offset the alleged overpayment. The time at which a disposition in respect of a particular item becomes final may depend not only upon what action is taken with respect to that item but also upon whether the claim for refund is allowed or disallowed.

(a) *Items with respect to which the taxpayer's claim is allowed.*

(1) The disposition with respect to an item as to which the taxpayer's contention in the claim for refund is sustained becomes final on the date of allowance of the refund or credit if—

(i) The taxpayer's claim for refund is unqualifiedly allowed; or

(ii) The taxpayer's contention with respect to an item is sustained and with respect to other items is denied, so that the net result is an allowance of refund or credit; or

(iii) The taxpayer's contention with respect to an item is sustained, but the Commissioner applies other items to offset the amount of the alleged overpayment and the items so applied do not completely offset such amount but merely reduce it so that the net result is an allowance of refund or credit.

(2) If the taxpayer's contention in the claim for refund with respect to an item is sustained but the Commissioner applies other items to offset the amount of the alleged overpayment so that the net result is a disallowance of the claim for refund, the date of mailing, by registered mail, of the notice of disallowance (see section 3226 of the Revised Statutes, as amended) is the date of the final disposition as to the item with respect to which the taxpayer's contention is sustained.

(b) *Items with respect to which the taxpayer's claim is disallowed.*—The disposition with respect to an item as to which the taxpayer's contention in the claim for refund is denied becomes final upon the expiration of the time allowed by section 3226 of the Revised Statutes, as amended, for instituting suit on the claim for refund, unless suit is instituted prior to the expiration of such period, if—

(i) The taxpayer's claim for refund is unqualifiedly disallowed; or

(ii) The taxpayer's contention with respect to an item is denied and with respect to other items is sustained so that the net result is an allowance of refund or credit; or

(iii) The taxpayer's contention with respect to an item is sustained in part and denied in part. For example, if the taxpayer claims a deductible loss of $10,000 and a consequent overpayment of $2,500 and the Commissioner concedes that a deductible loss was sustained but in the amount of $5,000 only, or that a deductible loss of $10,000 was sustained, but under the Commissioner's computation the consequent overpayment is only $2,000, the disposition of the claim for refund with respect to both the allowance of the $5,000 and the disallowance of the remaining $5,000, or the allowance of the $2,000 overpayment and the denial of the $500, becomes final upon the expiration of the time for instituting suit on the claim for refund unless suit is instituted prior to the expiration of such period.

(c) *Items applied by the Commissioner in reduction of the refund or credit.*—If the Commissioner applies an item in reduction of the overpayment alleged in the claim for refund, and the net result is an allowance of refund or credit, the disposition with respect to the item so applied by the Commissioner becomes final upon the expiration of the time allowed by section 3226 of the Revised Statutes, as amended, for instituting suit on the claim for refund, unless suit is instituted prior to the expiration of such period. If such application of the item results in the assertion of a deficiency, such action does not constitute a final disposition by the Commissioner of a claim for refund within the meaning of section 820 (a) (1) (C) (ii) of the Act, but subsequent action taken with respect to such deficiency may result in a determination under section 820 (a) (1) (A) or (B) of the Act.

The necessity of waiting for the expiration of the two-year period of limitations provided in section 3226 of the Revised Statutes, as amended, may be avoided in such cases as are described under (b) or (c) of this article by the use of a closing agreement to effect a determination.

SECTION 820 (A) (2) AND (3) OF THE REVENUE ACT OF 1938

SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases*—(a) *Definitions.*—For the purpose of this section—

(2) *Taxpayer.*—Notwithstanding the provisions of section 901, the term "taxpayer" means any person subject to a tax under the applicable Revenue Act.

(3) *Related taxpayer.*—The term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination specified in subsection (b) (1), (2), (3), or (4) is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance therein referred to was made, in one of the following relationships: (A) husband and wife; (B) grantor and fiduciary; (C) grantor and beneficiary; (D) fiduciary and beneficiary, legatee, or heir; (E) decedent and decedent's estate; or (F) partner.

ART. 820 (a)-4. *Related taxpayer.*—An adjustment in the case of the taxpayer with respect to whom the error was made may be authorized under section 820 although the determination is made with respect to a different taxpayer, provided that such taxpayers stand in one of the relationships specified in section 820 (a) (3). The concept of "related taxpayer" has application only to section 820 (b) (1), (2), (3), or (4) and does not apply to section 820 (b) (5). If such relationship exists, it is not essential that the error be with respect to a transaction possible only by reason of the existence of the relationship. For example, if the error with respect to which an adjustment is sought under section 820 grew out of an assignment of rents between taxpayer A and taxpayer B, who are partners, and the determination is with respect to taxpayer A, an adjustment with respect to taxpayer B may be permissible despite the fact that the assignment had nothing to do with the business of the partnership. The relationship need not exist throughout the entire taxable year with respect to which the error was made, but only at some time during that taxable year. For example, if a taxpayer on February 15 assigns to his fiancee the net rents of a building which the taxpayer owns, and the two are married before the end of the taxable year, an adjustment may be permissible if the determination relates to such rents despite the fact that they were not husband and wife at the time of the assignment. See article 820 (b)-8 for the requirement in certain cases that the relationship exist at the time an inconsistent position is first maintained.

SECTION 820 (B) OF THE REVENUE ACT OF 1938

SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*—(b) *Circumstances of Adjustment.*—When a determination under the income tax laws—

(1) Requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer; or

(2) Allow a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer; or

(3) Require the exclusion from gross income of an item with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year or from the gross income of a related taxpayer; or

(4) Allows or disallows any of the additional deductions allowable in computing the net income of estates or trusts, or requires or denies any of the inclusions in the computation of net income of beneficiaries, heirs, or legatees, specified in section 162 (b) and (c) of this Act, and corresponding sections of prior revenue Acts, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, or disallowed, omitted, or allowed, as the case may be, in respect of the related taxpayer; or

(5) Determines the basis of property for depletion, exhaustion, wear and tear, or obsolescence, or for gain or loss on a sale or exchange, and in respect of any transaction upon which such basis depends there was an erroneous inclusion in or omission from the gross income of, or an erroneous recognition or nonrecognition of gain or loss to, the taxpayer or any person who acquired title to such property in such transaction and from whom mediately or immediately the taxpayer derived title subsequent to such transaction—

and, on the date the determination becomes final, correction of the effect of the error is prevented by the operation (whether before,

on, or after the date of enactment of this Act) of any provision of the internal-revenue laws other than this section and other than section 3229 of the Revised Statutes, as amended (relating to compromises), then the effect of the error shall be corrected by an adjustment made under this section. Such adjustment shall be made only if there is adopted in the determination a position maintained by the Commissioner (in case the amount of the adjustment would be refunded or credited in the same manner as an overpayment under subsection (c)) or by the taxpayer with respect to whom the determination is made (in case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under subsection (c)), which position is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be. In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency, the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or petition (or amended petition) to the Board of Tax Appeals for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination.

SECTION 162 (b) AND (c) OF THE REVENUE ACT OF 1938

SEC. 162. *Net income.*—The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.

ART. 820 (b)-0. *Circumstances of adjustment.*—Section 820 may be applied to correct the effect of an error if, on the date of the determination, correction of the effect of the error is prevented by the operation, whether before, on, or after the date of enactment of section 820, of any provision of the internal revenue laws other than section 820 and other than section 3229 of the Revised Statutes, as amended (relating to compromises). Examples of such provisions are: Sections 275, 311 (b) and (c), and 322 (b) and (d) of the Revenue Act of 1938 and the corresponding provisions of prior Revenue Acts, section 3226 of the Revised Statutes, as amended, section 610 of the Revenue Act of 1928, and section 906 (e) of the Revenue Act of 1924, as amended by section 601 of the Revenue Act of 1928 (periods of limitations); sections 272 (f) and 322 (c) of the Revenue Act of 1938 and corresponding provisions of prior Revenue Acts (effect of petition to Board of Tax Appeals on further deficiency letters and on credits or refunds); section 606 of the Revenue Act of 1928, as amended by sections 801 and 802 of the Revenue Act of 1938 (closing agreements); and sections 607, 608, and 609 of the Revenue Act of 1928 (payments, refunds or credits after period of limitation has expired).

If the tax liability for the year with respect to which the error was made has been compromised under section 3229 of the Revised Statutes, as amended, no adjustment may be made under section 820 with respect to that year.

Section 820 is not applicable if, on the date of the determination, correction of the effect of the error is permissible without recourse to such section.

The determination may be with respect to the tax imposed by Title I, Title IA, or section 602 of Title III, of the Revenue Act of 1938, and by the corresponding provisions of any prior Revenue Acts, by Title III of the Revenue Act of 1936, or by more than one of such provisions. Section 820 may be applied to correct the effect of the error only as to the tax or taxes for the year with respect to which the error was made which corresponds to the tax or taxes with respect to which the determination relates. Thus, if the determination relates to the tax imposed by Title I of the Revenue Act of 1938, the adjustment may be only with respect to the tax imposed by Title I of the Revenue Act applicable to the year with respect to which the error was made; if the determination relates to section 602 of Title III of the Revenue Act of 1938, the adjustment may be only with respect to the tax imposed by the corresponding provisions of the Revenue Act applicable to the year with respect to which the error was made.

ART. 820 (b)-1. *Double inclusion of item of gross income.*—Section 820 (b) (1) applies if the determination requires the inclusion, in a taxpayer's gross income, of an item which was erroneously included in the gross income of the same taxpayer for another taxable year or of a related taxpayer for the same or another taxable year.

Example (1).—A taxpayer who keeps his books on the cash basis, erroneously included in his return for 1933 an item of accrued rent. In 1938, after the period of limitations on refunds for 1933 has expired, the Commissioner discovers that the taxpayer received this rent in 1934 and asserts a deficiency for the year 1934, which is sustained by the Board of Tax Appeals in 1941. An adjustment is authorized with respect to the year 1933. If the taxpayer had returned the rent for both 1933 and 1934 and by a determination was denied a refund claimed for 1934 on account of the rent item, a similar adjustment is authorized.

Example (2).—A husband assigned to his wife salary to be earned by him in the year 1936. The wife included such salary in her separate return for that year and the husband omitted it. The Commissioner asserted a deficiency against the wife for 1936 with respect to a different item and she contested that deficiency before the Board of Tax Appeals. The wife would therefore be barred by section 322 (c) of the Revenue Act of 1936 from filing a claim for refund for 1936. Thereafter, the Commissioner asserts a deficiency against the husband on account of the omission of such salary from his return for 1936. The husband unsuccessfully contests the deficiency before the Board of Tax Appeals. An adjustment is authorized with respect to the wife's tax for 1936.

ART. 820 (b)-2. *Double allowance of a deduction or credit.*—Section 820 (b) (2) applies if the determination allows the taxpayer a deduction or credit which was erroneously allowed the same taxpayer for another taxable year or a related taxpayer for the same or another taxable year.

Example (1).—A taxpayer in his return for 1935 claimed and was allowed a deduction for destruction of timber by a forest fire. Subsequently it was discovered that the forest fire occurred in 1936 rather than in 1935. After the expiration of the period of limitations for the assessment of a deficiency for 1935, the taxpayer files a claim for refund for 1936 based upon a deduction for the fire loss in that year. The Commissioner allows the claim for refund. An adjustment is authorized with respect to the year 1935.

Example (2).—The beneficiary of a testamentary trust in his return for 1933 claimed, and was allowed, a deduction for depreciation of the trust property. The Commissioner asserted a deficiency against the beneficiary for 1933 with respect to a different item and final decision of the Board of Tax Appeals was rendered in 1935, so that the Commissioner was thereafter barred by section 272 (f) of the Revenue Act of 1932 from asserting a further deficiency against the beneficiary for 1933. The trustees thereafter filed a timely refund claim contending that under the terms of the will the trust, and not the beneficiary, was entitled to the allowance for depreciation. The court in 1939 sustains the refund claim. An adjustment is authorized with respect to the beneficiary's tax for 1933.

ART. 820 (b)-3. *Erroneous exclusion of item of gross income with respect to which tax was paid.*—Section 820 (b) (3) applies if the determination requires the exclusion, from a taxpayer's gross income, of an item with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the same taxpayer for another

taxable year or of a related taxpayer for the same or another taxable year.

Example (1).—A taxpayer received payments in 1936 under a contract for the performance of services and included the payments in his return for that year. A closing agreement was thereafter made with respect to the tax liability of the taxpayer for 1935. The taxpayer subsequently filed a claim for refund for the year 1936, asserting that he kept his books on the accrual basis and that, as the payments had accrued in 1935, they were properly taxable in that year. The claim for refund is allowed in 1939. An adjustment is authorized with respect to the year 1935. If the taxpayer had not included the payments in any return and the Commissioner had asserted a deficiency for 1936 with respect to the payments, and the deficiency is not sustained by the Board of Tax Appeals in its final decision in 1940, no adjustment is authorized with respect to the year 1935. Although the determination requires the exclusion of the item from gross income, no tax had been paid with respect thereto. If the taxpayer, however, had paid the deficiency and thereafter successfully contested it before the Board or successfully sued for refund in court, an adjustment is authorized.

Example (2).—A father and son conducted a partnership business, each being entitled to one-half of the net profits. The father included the entire net income of the partnership in his return for 1933 and the son included no portion of this income in his return for that year. Shortly before the expiration of the period of limitations with respect to deficiency assessments and refund claims for both father and son for 1933, the father filed a claim for refund of that portion of his 1933 tax attributable to the half of the partnership income which should have been included in the son's return. The court sustains the claim for refund in 1940. An adjustment is authorized with respect to the son's tax for 1933.

ART. 820 (b)-4. *Correlative deductions and inclusions specified in section 162 (b) and (c), Revenue Act of 1938, and corresponding provisions of prior Revenue Acts.*—(a) Section 820 (b) (4) applies if the determination relates to the additional deduction specified in section 162 (b) and (c) of the Revenue Act of 1938, or the corresponding provisions of a prior Revenue Act, for amounts distributable to the beneficiaries, heirs, or legatees of an estate or trust, and such determination requires:

(1) The allowance to the estate or trust of such additional deduction when such amounts have been erroneously omitted or excluded from the income of the beneficiaries, heirs or legatees;

(2) The inclusion of such amounts in the income of the beneficiaries, heirs, or legatees when such additional deduction has been erroneously disallowed to or omitted by the estate or trust;

(3) The disallowance to an estate or trust of such additional deduction when such amounts have been erroneously included in the income of the beneficiaries, heirs, or legatees; or

(4) The exclusion of such amounts from the income of the beneficiaries, heirs, or legatees when such additional deduction has been erroneously allowed to the estate or trust.

The provisions of (a) (1) of this article may be illustrated as follows:

Example.—For the taxable year 1935, a trustee, directed by the trust instrument to accumulate the trust income, made no distribution to the beneficiary and returned the entire net income as taxable to the trust. Accordingly, the beneficiary did not include the trust income in his return for the year 1935. In 1937 a State court held invalid the clause directing accumulation. In 1939 the trustee, relying upon the court decision, files a claim for refund of the tax paid on behalf of the trust for the year 1935. The claim is sustained by the court in 1941, after the expiration of the period of limitations upon deficiency assessments against the beneficiary for the year 1935. An adjustment is authorized with respect to the beneficiary's tax for the year 1935.

The provisions of (a) (2) of this article may be illustrated as follows:

Example.—Assume the same facts as in the example under (a) (1) except that, instead of the trustee's filing a refund claim, the Commissioner, relying upon the decision of the State court, asserts a deficiency against the beneficiary for 1935. The deficiency is sustained by final decision of the Board of Tax Appeals in 1941, after the expiration of the period for filing claim for refund on behalf of the trust for 1935. An adjustment is authorized with respect to the trust for the year 1935.

The provisions of (a) (3) of this article may be illustrated as follows:

Example.—A trustee claimed in the return for 1935 a deduction for income distributed to the beneficiary. The income was included by the beneficiary in his return for 1935. In 1939 the Commissioner asserts a deficiency against the trust on the ground that the amount distributed to the beneficiary represented a charge against the corpus of the trust and did not constitute a distribution of income. The deficiency is sustained by final decision of the Board of Tax Appeals in 1941, after the expiration of the period for filing claims for refund by the beneficiary for 1935. An adjustment is authorized with respect to the beneficiary's tax for the year 1935.

The provisions of (a) (4) of this article may be illustrated as follows:

Example.—Assume the same facts as in the example under (a) (3), except that, instead of the Commissioner's asserting a deficiency, the beneficiary files a refund claim for 1935 on the same ground. The claim is sustained by the court in 1941, after the expiration of the period of limitations upon deficiency assessments against the trust for 1935. An adjustment is authorized with respect to the trust for the year 1935.

ART. 820 (b)-5. *Determination of basis of property in case of erroneous treatment of transaction relating to acquisition thereof.*—Section 820 (b) (5) applies if the determination establishes the basis of property for income tax purposes and in respect of the transaction upon which such basis depends there was an erroneous inclusion in or omission from gross income or an erroneous recognition or nonrecognition of gain or loss with respect to (1) the taxpayer with respect to whom the determination is made, or (2) any person who acquired title to such property in such transaction and the taxpayer with respect to whom the determination is made mediately or immediately derived title from such person subsequent to such transaction. Subsection 820 (b) (5) applies with respect to the person who acquired the property and any subsequent transferees or donees who have a substituted basis ascertained by reference to the basis in the hands of such person. No adjustment is authorized with respect to the transferor of the property in the transaction upon which the basis of the property depends, when the determination is with respect to (1) the original transferee, or (2) a subsequent transferee of such original transferee.

Example (1).—In 1933 taxpayer A transferred property which had cost him $5,000 to the X Corporation in exchange for an original issue of shares of its stock having a fair market value of $10,000. In his return for 1933 taxpayer A treated the exchange as one in which gain or loss was not recognizable:

(a) In 1938 the X Corporation claims that gain should have been recognized on the exchange in 1933 and therefore the property it received had a $10,000 basis for depreciation. Its contention is confirmed by a closing agreement. No adjustment is authorized with respect to the tax of the X Corporation for 1933, as there was no "erroneous inclusion in or omission from the gross income of, or an erroneous recognition or nonrecognition of gain or loss to" the X Corporation with respect to the exchange in 1933. Moreover no adjustment is authorized with respect to taxpayer A, as he is not the taxpayer with respect to whom the determination is made, nor does the determination relate to the property which taxpayer A acquired in the exchange in 1933, but, rather, to the property which he transferred in such exchange.

(b) In 1939 the X Corporation transfers the property to the Y Corporation in a tax-free exchange. In 1940 the Y Corporation sells the property and com-

putes its profit on the basis of $10,000, which basis is sustained by the Board of Tax Appeals. No adjustment is authorized with respect to the Y Corporation or with respect to taxpayer A, for the reason stated in (a).

(c) In 1941 taxpayer A sells the stock which he had received in 1933 and claims that, as gain should have been recognized on the exchange in 1933, the basis for computing the profit on the sale is $10,000. His contention is confirmed in a closing agreement. An adjustment is authorized with respect to his tax for the year 1933, as the basis for computing gain on the sale depends upon the transaction in 1933 and in respect of that transaction there was an erroneous nonrecognition of gain to taxpayer A, "the taxpayer" with respect to whom the determination is made.

(d) Taxpayer A does not sell the stock but makes a gift of it to taxpayer B, who later sells the stock and claims the $10,000 basis, which contention is confirmed in a closing agreement. An adjustment is authorized with respect to the tax of taxpayer A for 1933, as the basis for computing gain on the sale by taxpayer B depends upon the transaction in 1933 and in respect of that transaction there was erroneous nonrecognition of gain to taxpayer A, the "person who acquired title to such property in such transaction and from whom * * * immediately" taxpayer B, with respect to whom the determination is made, "derived title subsequent to such transaction".

Example (2).—In 1934 taxpayer A sold property acquired at a cost of $5,000 to taxpayer B for $10,000. In his return for 1934 taxpayer A failed to include the profit on such sale. In 1939 taxpayer B sells the property for $12,000 and in his return for 1939 reports a gain of $2,000 upon the sale, which is confirmed in a closing agreement. No adjustment is authorized with respect to the tax of taxpayer A for 1934, as taxpayer A is not the taxpayer with respect to whom the determination is made; nor does the determination relate to property which taxpayer A acquired in the transaction in 1934, but rather to property which he transferred in such transaction.

Example (3).—In 1933 a taxpayer received as additional compensation shares of stock in a corporation but did not include any amount in his return for that year on account of the receipt of such stock. In 1938, after the expiration of the period of limitations on deficiency assessments for 1933, he sells the stock for $15,000 and reports $5,000 in his return for 1938 as profit on the sale. A deficiency is asserted by the Commissioner on the theory that the basis is zero and the recognized gain is $15,000. The Board of Tax Appeals sustains the taxpayer's contention that the transaction was erroneously treated in 1933 in that the property then had a fair market value of $10,000. An adjustment is authorized with respect to the year 1933.

Example (4).—In 1933 a taxpayer received 100 shares of stock of the X Corporation having a fair market value of $5,000, in exchange for shares of stock in the Y Corporation which he had acquired at a cost of $12,000. In his return for 1933 the taxpayer treated the exchange as one in which gain or loss was not recognizable. The taxpayer sold 50 shares of the X Corporation stock in 1934 and in his return for that year treated such shares as having a $6,000 basis. In 1938 the taxpayer sells the remaining 50 shares of stock of the X Corporation for $7,500 and reports $1,500 gain in his return for 1938. After the expiration of the period of limitations on deficiency assessments and on refund claims for 1933 and 1934, the Commissioner asserts a deficiency for 1938 on the ground that the loss realized on the exchange in 1933 was erroneously treated as nonrecognizable, and that the basis for computing gain upon the sale in 1938 is $2,500, resulting in a gain of $5,000. The deficiency is sustained by the Board of Tax Appeals in 1943. An adjustment is authorized with respect to the year 1933 as to the entire $7,000 loss realized on the exchange. No adjustment is authorized with respect to the year 1934 as the basis for computing gain upon the sale of the 50 shares in 1938 does not depend upon the transaction in 1934.

ART. 820 (b)–6. *Law applicable in determination of error.*—The question whether there was an erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition is determined under the provisions of the internal revenue laws applicable with respect to the year as to which the inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, was made. The fact that the inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, was in pursuance of an interpretation, either judicial or administrative, accorded such provisions of the internal revenue laws at the time of such action is not necessarily determinative of this question. For example, if a later judicial decision authoritatively alters such interpretation so that such action was contrary to such provisions of the internal revenue laws as later interpreted, the inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, is erroneous within the meaning of section 820.

ART. 820 (b)–7. *Operation dependent upon maintenance of inconsistent position—(a) Adjustments resulting in additional assessments.*—An adjustment which would result in an additional assessment is authorized only if (1) *the taxpayer*, with respect to whom the determination is made, has, in connection therewith, maintained a position which is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, and (2) such inconsistent position is adopted in the determination.

Example.—A taxpayer in his return for 1935 claimed and was allowed a deduction for a loss arising from a casualty. After the taxpayer had filed his return for 1936 and after the period of limitations upon the assessment of a deficiency for 1935 had expired, it was discovered that the loss actually occurred in 1936. The taxpayer, therefore, filed a claim for refund for the year 1936 based upon the allowance of a deduction for the loss in that year, and the claim was allowed by the Commissioner. The taxpayer thus has maintained a position inconsistent with the allowance of the deduction for 1935 by filing a claim for refund for 1936 based upon the same deduction. As the determination—the allowance by the Commissioner of the claim for refund—adopts such inconsistent position, an adjustment is authorized for the year 1935.

An adjustment which would result in an additional assessment is not authorized if the Commissioner, and not the taxpayer, has maintained such inconsistent position.

Example.—In the first example under this article, assume that the taxpayer did not file a claim for refund for 1936 but the Commissioner issued a notice of deficiency for 1936 based upon other items. The taxpayer filed a petition with the Board of Tax Appeals and the Commissioner in his answer voluntarily proposed the allowance of a deduction for the loss previously allowed for 1935. The Board took the deduction into account in its redetermination of the tax for the year 1936. In such case no adjustment would be authorized for the year 1935 as the Commissioner, and not the taxpayer, has maintained a position inconsistent with the allowance of a deduction for the loss in that year.

(b) *Adjustments resulting in refund or credit.*—An adjustment which would result in the allowance of a refund or credit is authorized only if (1) *the Commissioner*, in connection with a determination, has maintained a position which is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, and (2) such inconsistent position is adopted in the determination.

Example.—A taxpayer who keeps his books on the cash basis erroneously included in his return for 1936 an item of accrued interest. After the period of limitations on refunds for 1936 had expired, the Commissioner asserted a deficiency for the year 1937 on the ground that the item of interest was received in 1937, and, therefore, was properly includible in gross income for that

year. The taxpayer appealed to the Board of Tax Appeals, which sustained the deficiency. By asserting a deficiency for 1937 based upon the inclusion of the interest item in that year, the Commissioner has maintained a position inconsistent with the inclusion of the interest item in 1936. As the determination—the decison of the Board of Tax Appeals sustaining the deficiency—adopted such inconsistent position, an adjustment is authorized for the year 1936.

An adjustment which would result in the allowance of a refund or credit is not authorized if the taxpayer with respect to whom the determination is made, and not the Commissioner, has maintained such inconsistent position.

Example.—In the first example under (*b*) of this article assume that the Commissioner asserted a deficiency for 1937 based upon other items for that year, but in computing the net income upon which such deficiency was based did not include the item of interest. The taxpayer appealed to the Board of Tax Appeals and in his petition asserted that the interest item should be included in gross income for 1937. The Board included the item of interest in its redetermination of the tax for the year 1937. In such case no adjustment would be authorized for 1936 as the taxpayer, and not the Commissioner, has maintained a position inconsistent with the erroneous inclusion of the item of interest in the gross income of the taxpayer for that year.

ART. 820 (b)–8. *Existence of status of related taxpayer at time of the first maintenance of an inconsistent position.*—No adjustment by way of a deficiency assessment shall be made with respect to a related taxpayer unless the relationship existed both in the taxable year with respect to which the error was made and at the time the taxpayer with respect to whom the determination is made first maintained, in the manner described in this article, the inconsistent position with respect to the taxable year to which the determination relates.

If the inconsistent position is maintained in a return, claim for refund, or petition (or amended petition) to the Board of Tax Appeals, for the taxable year in respect of which the determination is made, the requisite relationship must exist on the date of filing such document. If the inconsistent position is maintained in more than one of such documents, the requisite date is the date of filing of the document in which it was first maintained. If the inconsistent position was not thus maintained then the relationship must exist on the date of the determination, as, for example, where at the instance of the taxpayer a deduction is allowed, the right to which was not asserted in a return, claim for refund, or petition to the Board, and a determination is effected by means of a closing agreement.

SECTION 820 (c) OF THE REVENUE ACT OF 1938

SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases*—(c) *Method of Adjustment.*—The adjustment authorized in subsection (b) shall be made by assessing and collecting, or refunding or crediting, the amount thereof, to be ascertained as provided in subsection (d), in the same manner as if it were a deficiency determined by the Commissioner with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year with respect to which the error was made, and as if on the date of the determination specified in subsection (b) one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year.

ART. 820 (c)–1. *Method of adjustment.*—If the amount of the adjustment ascertained pursuant to section 820 (d) represents an increase in tax it is to be treated as if it were a deficiency determined by the Commissioner with respect to the taxpayer as to whom the error was made and for the taxable year with respect to which the error was made. The amount of the adjustment is thus to be assessed and collected under the law and regulations applicable to the assessment and collection of deficiencies, subject, however, to the limitations imposed by section 820 (e). Notice of deficiency, unless waived, must be issued with respect to such amount and the taxpayer may contest the deficiency before the Board of Tax Appeals or, if he chooses, may pay the deficiency and later file claim for refund. If the amount of the adjustment ascertained pursuant to section 820 (d) represents a decrease in tax, it is to be treated as if it were an overpayment claimed by the taxpayer with respect to whom the error was made for the taxable year with respect to which the error was made. Such amount may be recovered under the law and regulations applicable to overpayments of tax, subject, however, to the limitations imposed by section 820 (e). The taxpayer must file a claim for refund thereof, unless the overpayment is refunded without such claim, and if the claim is denied or not acted upon by the Commissioner within the prescribed time, the taxpayer may then file suit for refund. The amount of the adjustment treated as if it were a deficiency or an overpayment, as the case may be, will bear interest and be subject to additions to the tax to the extent provided by the internal revenue laws applicable to deficiencies and overpayments for the taxable year with respect to which the error was made.

For the purpose of the adjustment authorized by section 820, the period of limitation upon the making of an assessment or upon refund or credit for the taxable year with respect to which the error was made, as the case may be, shall be considered as if, on the date of the determination, one year remained before expiration of such period, regardless of whether or not such period had expired prior to the date of the determination. The Commissioner thus has one year from the date of the determination within which to mail a notice of deficiency in respect of the amount of the adjustment where such amount is treated as if it were a deficiency. The issuance of such notice of deficiency, in accordance with the law and regulations applicable to the assessment of deficiencies, will suspend the running of the one-year period of limitations provided by section 820 (c). In accordance with the applicable law and regulations governing the collection of deficiencies (see section 276 (c) of this Act and the corresponding provisions of prior Revenue Acts), the period of limitation for collection of the amount of the adjustment will commence to run from the date of assessment of such amount. Similarly, the taxpayer has a period of one year from the date of the determination within which to file a claim for refund in respect of the amount of the adjustment where such adjustment is treated as if it were an overpayment. Where the amount of the adjustment is treated as if it were a deficiency and the taxpayer chooses to pay such deficiency and contest it by way of claim for refund, the period of limitation upon filing claim for refund will commence to run from the date of such payment (see section 322 (b) of the Revenue Act of 1938 and the corresponding provisions of prior Revenue Acts).

SECTION 820 (d) OF THE REVENUE ACT OF 1938

SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*—(d) *Ascertainment of Amount of Adjustment.*—In computing the amount of an adjustment under this section there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be (1) the tax shown by the taxpayer, with respect to whom the error was made, upon his return for such taxable year, increased by the amounts previously assessed (or collected without assessment) as deficiencies, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or (2) if no amount was shown as the tax by such taxpayer upon his return, or if no return was made by such taxpayer, then the amounts previously assessed (or collected without assessment) as deficiencies, but such amounts previously assessed, or collected without assessment, shall be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax. There shall then be ascertained the increase or decrease in the tax previously determined which results solely from the correct exclusion, inclusion, allowance, disallowance, recognition, or nonrecognition, of the item, inclusion, deduction, credit, gain, or loss, which was the subject of the error. The amount so ascertained (together with any amounts wrongfully collected, as additions to the tax or interest, as a result of such error) shall be the amount of the adjustment under this section.

ART. 820 (d)–1. *Ascertainment of amount of adjustment.*—The amount of the adjustment shall be ascertained as follows:

(1) The tax previously determined for the taxpayer as to whom the error was made, for the taxable year with respect

to which the error was made, must first be ascertained. This may be the amount of tax shown on the taxpayer's return, but if any changes in that amount have been made they must be taken into account. In such cases the tax previously determined will be the tax shown on the return, increased by any amounts previously assessed (or collected without assessment) as deficiencies, and decreased by any amounts previously abated, credited, refunded or otherwise repaid in respect of such tax. If no amount was shown as the tax upon the return, or if no return was made, the tax previously determined will be the sum of the amounts previously assessed, or collected without assessment, as deficiencies, decreased by any amounts previously abated, credited, or otherwise repaid in respect of such tax.

The tax previously determined may consist of tax for any taxable year beginning after December 31, 1931, imposed by Title I, Title IA, section 602 of Title III, of the Revenue Act of 1938, by the corresponding provisions of prior Revenue Acts, by Title III of the Revenue Act of 1936, or by any one or more of such provisions.

(2) After the tax previously determined has been ascertained a recomputation must then be made to ascertain the increase or decrease in tax, if any, resulting from the correction of the error. The difference between the tax previously determined and the tax as recomputed after correction of the error will be the amount of the adjustment.

With the exception of the items upon which the tax previously determined was based and the item or items with respect to which the error was made, no other item shall be considered in computing the amount of the adjustment. If the treatment of any item upon which the tax previously determined was based, or if the application of any provisions of the internal revenue laws with respect to such tax, depends upon the amount of income (e. g., charitable contributions, foreign tax credit, earned income credit), readjustment in these particulars will be necessary as part of the recomputation in conformity with the change in the amount of the income which results from the correct treatment of the item or items in respect of which the error was made.

Any interest or additions to the tax collected as a result of the error shall be taken into account in determining the amount of the adjustment.

Example.—For the taxable year 1936 a married man with no dependents, who kept his books on the cash receipts and disbursements basis, filed a return disclosing gross income of $42,000, deductions amounting to $12,000, and a net income of $30,000. Included among other items in the gross income were salary in the amount of $15,000 and rents accrued but not yet paid in the amount of $5,000. During the taxable year he donated $10,000 to the American Red Cross and in his return claimed a deduction of $5,294.12 on account thereof, representing the maximum deduction allowable under the 15 percent limitation imposed by section 23 (o), Revenue Act of 1936. In computing his net income he omitted interest income amounting to $6,000 and neglected to take a deduction for interest paid in the amount of $4,500. The return disclosed a tax liability of $3,565, which was assessed and paid. After the expiration of the period of limitations upon the assessment of a deficiency or the allowance of a refund for 1936, the Commissioner included the item of rental income amounting to $5,000 in the taxpayer's gross income for the year 1937 and asserted a deficiency for that year. As a result of a final decision of the Board of Tax Appeals sustaining the deficiency for 1937, an adjustment is authorized for the year 1936. The amount of the adjustment is computed as follows:

Tax previously determined for 1936		$3,565.00
Net income for 1936 upon which tax previously determined was based	30,000.00	
Less: Rents erroneously included	5,000.00	
Balance		25,000.00
Adjustment for contributions (Add 15 percent of $5,000)		750.00
Net income as adjusted		25,750.00
Tax as recomputed		2,646.50
Tax previously determined		3,565.00
Difference		918.50
Amount of adjustment to be refunded or credited		918.50

In accordance with the provisions of section 820 (d), the recomputation to determine the amount of the adjustment does not take into consideration the item of $6,000 representing interest received, which was omitted from gross income, or the item of $4,500 representing interest paid, for which no deduction was allowed.

SECTION 820 (E) OF THE REVENUE ACT OF 1938

SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*—(e) *Adjustment unaffected by other items, etc.*—The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under this section, shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, gain, or loss other than the one which was the subject of the error. Such amount, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain, or loss other than the one which was the subject of the error.

ART. 820 (e)-1. *Effect of other items on amount of adjustment.*—The amount of the adjustment ascertained under section 820 (d) shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, or gain or loss with respect to the year as to which the error was made.

Example (1).—In the example set forth in article 820 (d), if, after the amount of the adjustment has been ascertained, the taxpayer filed a refund claim for the amount thereof, the Commissioner could not diminish the amount of that claim by offsetting against it the amount of tax which should have been paid with respect to the $6,000 interest item omitted from gross income for the year 1936; nor could the court, if suit were brought on such claim for refund, offset against the amount of the adjustment the amount of tax which should have been paid with respect to such interest.

Example (2).—Assume that a taxpayer included in his gross income for the year 1936 an item which should have been included in gross income for the year 1935. After expiration of the period of limitations upon the assessment of a deficiency or the allowance of a refund for 1935, the taxpayer filed a claim for refund for the year 1936 on the ground that such item was not properly includible in gross income for that year. The claim for refund was allowed by the Commissioner, and as a result of such determination an adjustment was authorized under section 820 with respect to the tax for 1935. If, in such case, the Commissioner issued a notice of deficiency for the amount of the adjustment and the taxpayer contested the deficiency before the Board of Tax Appeals, the taxpayer could not in such proceeding claim an offset based upon his failure to take an allowable deduction for the year 1935; nor could the Board of Tax Appeals in its decision offset against the amount of the adjustment any overpayment for the year 1935 resulting from the failure to take such deduction.

If the Commissioner has refunded the amount of an adjustment under section 820, the amount so refunded may not subsequently be recovered by the Commissioner in a suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain, or loss (other than the one which was the subject of the error) with respect to the year as to which the error was made.

Example (3).—In the example set forth in article 820 (d), if the Commissioner had refunded the amount of the adjustment, no part of the amount so refunded could subsequently be recovered by the Commissioner by a suit for erroneous refund based on the ground that there was no overpayment for 1936, as the taxpayer had failed to include in gross income the $6,000 item of interest received in that year.

If the Commissioner has assessed and collected the amount of an adjustment, no part thereof may be recovered by the taxpayer in any suit for refund based upon any item, inclusion, deduction, credit, exemption, gain or loss (other than the one which was the subject of the error) with respect to the year as to which the error was made.

Example (4).—In example (2) in this article, if the taxpayer had paid the

amount of the adjustment, he could not subsequently recover any part of such payment in a suit for refund based upon his failure to take an allowable deduction for the year 1935.

If the amount of the adjustment is considered as an overpayment, it may be credited, under the applicable law and regulations thereunder, against any income or excess-profits tax, or installment thereof, due from the taxpayer. Likewise, if the amount of the adjustment is considered as a deficiency, any overpayment by the taxpayer of income or excess-profits tax may be credited against the amount of such adjustment in accordance with the applicable law and regulations thereunder. (See section 322 of the Revenue Act of 1938 and corresponding provisions of prior Revenue Acts.) Accordingly, it may be possible in one transaction between the Commissioner and the taxpayer to settle the taxpayer's tax liability for the year with respect to which the determination is made and to make the adjustment under section 820 for the year with respect to which the error was made.

SECTION 820 (F) OF THE REVENUE ACT OF 1938

SEC. 820. *Mitigation of effect of limitation and other provisions in income tax cases.*—(f) *No adjustment for years prior to 1932.*—No adjustment shall be made under this section in respect of any taxable year beginning prior to January 1, 1932.

ART. 820 (f)–1. *No adjustment for years prior to 1932.*—Where the year with respect to which the error was made is a taxable year beginning prior to January 1, 1932, no adjustment is authorized under section 820.

[SEAL] MILTON E. CARTER,
Acting Commissioner of Internal Revenue.

Approved, August 23, 1938.

ROSWELL MAGILL,
Acting Secretary of the Treasury.

[F. R. Doc. 38-2494; Filed, August 24, 1938; 3:22 p. m.]

TITLE 27—INTOXICATING LIQUORS

FEDERAL ALCOHOL ADMINISTRATION DIVISION

[Regulations No. 4, Amendment No. 2]

AMENDING CERTAIN PROVISIONS OF THE WINE LABELING AND ADVERTISING REGULATIONS RELATIVE TO STANDARDS OF IDENTITY AND OTHER MATTERS

Pursuant to the provisions of Section 5 of the Federal Alcohol Administration Act, as amended, Regulations No. 4,[1] Relating to Labeling and Advertising of Wine, as amended, are further amended as follows:

1. Amend Article I, paragraphs (f), (g) and (h), of said regulations to read:

(f) The term "pure condensed must" means the dehydrated juice or must of sound, ripe grapes, or other fruit or agricultural products, concentrated to not more than 80° (Balling), the composition thereof remaining unaltered except for removal of water; the term "restored pure condensed must" means pure condensed must to which has been added an amount of water not exceeding the amount removed in the dehydration process; and the term "sugar" means pure cane, beet, or dextrose sugar in dry form containing, respectively, not less than 95 per cent of actual sugar calculated on a dry basis.

(g) The term "fortifying spirits" means spirits distilled exclusively from (1) grapes, citrus fruit, or fruit, or their products or residues, or (2) grape wine, citrus wine, or fruit wine, or (3) the fruit pomace residuum of such wines. The term "alcohol" means ethyl alcohol distilled at or about 190° proof.

(h) The term "vintage wine" means a wine made wholly from grapes gathered in the same calendar year and grown and fermented in the same viticultural area, and conforming to the standards prescribed in classes 1 and 2 of article II hereof.

2. Amend Article II of said regulations to read:

ARTICLE II. STANDARDS OF IDENTITY FOR WINE

SEC. 20. *Application of standards.*—The standards of identity for the several classes and types of wine set forth herein shall be applicable to all regulations and permits issued under the act. Whenever any term for which a standard of identity has been established herein is used in any such regulation or permit, such term shall have the meaning assigned to it by such standard of identity.

SEC. 21. *The standards of identity.*—Standards of identity for the several classes and types of wine set forth herein shall be as follows:

CLASS 1. *Grape wine.*—(a) "Grape wine" is wine produced by the normal alcoholic fermentation of the juice of sound, ripe grapes (including restored or unrestored pure condensed grape must), with or without the addition, after fermentation, of pure condensed grape must, and with or without added fortifying grape spirits or alcohol, but without other addition or abstraction except as may occur in cellar treatment, *Provided*, That the product may be ameliorated before, during, or after fermentation by either of the following methods:

(1) By adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 per cent; but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 per cent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or an unfermented residual sugar content, derived from added sugar, of more than 11 per cent by weight.

(2) By adding, separately or in combination, not more than 11 per cent by weight of dry sugar, or not more than 10 per cent by weight of water.

The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural red wine, more than 0.14 gram, and for other grape wine, more than 0.12 gram, per 100 cubic centimeters (20° C.).

(b) "Red wine" is grape wine which contains the red coloring matter of the skins, juice or pulp of grapes.

(c) "White wine" is grape wine which does not contain the red coloring matter of the skins, juice or pulp of grapes.

(d) "Light wine" (including "light grape wine", "light red wine" and "light white wine") is grape wine having an alcoholic content not in excess of 14 per cent by volume.

(e) "Natural grape wine" (including "natural red wine" and "natural white wine") is grape wine containing no fortifying grape spirits or added alcohol.

(f) "Angelica", "madeira", "muscatel" and "port" are types of grape wine containing fortifying grape spirits or added alcohol, having the taste, aroma, and characteristics generally attributed to these products, and an alcoholic content of not less than 18 per cent by volume.

(g) "Sherry" is a type of grape wine containing fortifying grape spirits or added alcohol, having the taste, aroma, and characteristics generally attributed to this product, and an alcoholic content of not less than 17 per cent by volume.

(h) "Light port" and "light sherry" are types of grape wine containing fortifying grape spirits or added alcohol, having the taste, aroma, and characteristics generally attributed to "port" and "sherry", respectively, and an alcoholic content of more than 14 per cent by volume.

CLASS 2. *Sparkling grape wine.*—(a) "Sparkling grape wine" (including "sparkling wine", "sparkling red wine" and "sparkling white wine") is grape wine made effervescent with carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank or bottle.

(b) "Champagne" is a type of sparkling light white wine which derives its effervescence solely from the secondary fermentation of the wine within glass containers of not greater than one gallon capacity, and which possesses the taste, aroma, and other characteristics attributed to champagne as made in the champagne district of France.

(c) A sparkling light white wine having the taste, aroma, and characteristics generally attributed to champagne but not otherwise conforming to the standard for "champagne" may, in addition

[1] 1 F. R. 83.

to but not in lieu of the class designation "sparkling wine", be further designated as "champagne style" or "champagne type" or "American (or New York State, California, etc.) champagne—bulk process"; all the words in any such further designation shall be equally conspicuous and shall appear in direct conjunction with and in lettering approximately one-half the size of the words "sparkling wine".

CLASS 3. *Carbonated grape wine.*—(a) "Carbonated grape wine" (including "carbonated wine", "carbonated red wine", and "carbonated white wine") is grape wine made effervescent with carbon dioxide other than that resulting solely from the secondary fermentation of the wine within a closed container, tank or bottle.

CLASS 4. *Citrus wine.*—(a) "Citrus wine" or "citrus fruit wine" is wine produced by the normal alcoholic fermentation of the juice of sound, ripe citrus fruit (including restored or unrestored pure condensed citrus must), with or without the addition, after fermentation, of pure condensed citrus must, and with or without added fortifying citrus spirits or alcohol, but without other addition or abstraction except as may occur in cellar treatment, *Provided*, That the product may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 per cent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 per cent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or an unfermented residual sugar content, derived from added sugar, of more than 11 per cent by weight.

The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural citrus wine, more than 0.14 gram, and for other citrus wine, more than 0.12 gram, per 100 cubic centimeters (20° C.).

(b) "Light citrus wine" or "light citrus fruit wine" is citrus wine having an alcoholic content not in excess of 14 per cent by volume.

(c) "Natural citrus wine" or "natural citrus fruit wine" is citrus wine containing no fortifying citrus spirits or added alcohol.

(d) Citrus wine derived wholly (except for sugar, water or added alcohol) from one kind of citrus fruit, shall be designated by the word "wine" qualified by the name of such citrus fruit, e. g., "orange wine", "grapefruit wine". Citrus wine not derived wholly from one kind of citrus fruit shall be designated as "citrus wine" or "citrus fruit wine" qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Citrus wine rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank or bottle, shall be further designated as "sparkling"; and citrus wine rendered effervescent by carbon dioxide otherwise derived, shall be further designated as "carbonated".

CLASS 5. *Fruit wine.*—(a) "Fruit wine" is wine (other than grape wine or citrus wine) produced by the normal alcoholic fermentation of the juice of sound, ripe fruit (including restored or unrestored pure condensed fruit must), with or without the addition, after fermentation, of pure condensed fruit must, and with or without added fortifying fruit spirits or alcohol, but without other addition or abstraction except as may occur in cellar treatment, *Provided*, That the product may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 per cent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 per cent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or an unfermented residual sugar content, derived from added sugar, of more than 11 per cent by weight.

The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural fruit wine, more than 0.14 gram, and for other fruit wine, more than 0.12 gram, per 100 cubic centimeters (20° C.).

(b) "Berry wine" is fruit wine produced from berries.

(c) "Light fruit wine" is fruit wine having an alcoholic content not in excess of 14 per cent by volume.

(d) "Natural fruit wine" is fruit wine containing no fortifying fruit spirits or added alcohol.

(e) Fruit wine derived wholly (except for sugar, water or added alcohol) from one kind of fruit shall be designated by the word "wine" qualified by the name of such fruit, e. g., "peach wine", "blackberry wine". Fruit wine not derived wholly from one kind of fruit shall be designated as "fruit wine" or "berry wine", as the case may be, qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Fruit wines which are derived wholly (except for sugar, water or added alcohol) from apples or pears may be designated "cider" and "perry", respectively, and shall be so designated if lacking in vinous taste, aroma and characteristics. Fruit wine rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank or bottle, shall be further designated as "sparkling"; and fruit wine rendered effervescent by carbon dioxide otherwise derived, shall be further designated as "carbonated".

CLASS 6. *Wine from other agricultural products.*—(a) Wine of this class is wine (other than grape wine, citrus wine or fruit wine) made by the normal alcoholic fermentation of sound fermentable agricultural products, either fresh or dried, or of the restored or unrestored pure condensed must thereof, with the addition before or during fermentation of a volume of water not greater than the minimum necessary to correct natural moisture deficiencies in such products, with or without the addition, after fermentation, of pure condensed must, and with or without added alcohol or such other fortifying spirits as will not alter the character of the product, but without other addition or abstraction except as may occur in cellar treatment, *Provided*, That the product may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 per cent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 per cent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or an unfermented residual sugar content, derived from added sugar, of more than 11 per cent by weight.

The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural wine of this class, more than 0.14 gram, and for other wine of this class, more than 0.12 gram, per 100 cubic centimeters (20° C.).

(b) "Light" wine of this class is wine having an alcoholic content not in excess of 14 per cent by volume.

(c) "Natural" wine of this class is wine containing no fortifying spirits or added alcohol.

(d) "Raisin wine" is wine of this class made from dried grapes.

(e) "Sake" is wine of this class produced from rice in accordance with the commonly accepted method of manufacture of such product.

(f) Wine of this class derived wholly (except for sugar, water or added alcohol) from one kind of agricultural product shall, except in the case of "sake", be designated by the word "wine" qualified by the name of such agricultural product, e. g., "honey wine", "raisin wine", "dried blackberry wine". Wine of this class not derived wholly from one kind of agricultural product shall be designated as "wine" qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Wine of this class rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of wine within a closed container, tank or bottle, shall be further designated as "sparkling"; and wine of this class rendered effervescent by carbon dioxide otherwise derived shall be further designated as "carbonated".

CLASS 7. *Vermouth.*—(a) "Vermouth" is a compound having an alcoholic con-

tent of not less than 15 per cent by volume, made by the mixture of extracts from macerated aromatic flavoring materials with grape wine containing fortifying grape spirits or added alcohol, and manufactured in such a manner that the product possesses the taste, aroma, and characteristics generally attributed to vermouth.

CLASS. 8. *Imitation, concentrate and substandard wine.*—(a) "Imitation wine" shall bear as a part of its designation the word "imitation", and shall include:

(1) Any wine containing synthetic materials.

(2) Any wine made from a mixture of water with residue remaining after thorough pressing of grapes, fruit or other agricultural products.

(3) Any class or type of wine the taste, aroma, color or other characteristics of which have been acquired, in whole or in part, by treatment with methods or materials of any kind, if the taste, aroma, color or other characteristics of normal wines of such class or type are acquired without such treatment.

(b) "Concentrate wine" shall bear as a part of its designation the word "concentrate", and shall include any wine made from must concentrated at any time to more than 80° (Balling).

(c) "Substandard wine" shall bear as a part of its designation the word "substandard", and shall include:

(1) Any wine having a volatile acidity in excess of the maximum prescribed therefor in this article.

(2) Any wine for which no maximum volatile acidity is prescribed in this article, having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.14 gram per 100 cubic centimeters (20° C.).

(3) Any wine for which a standard of identity is prescribed in this article, which, through disease, decomposition or otherwise, fails to have the composition, color, and clean vinous taste and aroma of normal wines conforming to such standard.

SEC. 22. *Blends, cellar treatment, alteration of class or type.*—(a) If the class or type of any wine shall be altered, and if the product as so altered does not fall within any other class or type either specified in this article or known to the trade, then such wine shall, unless otherwise specified in this section, be designated with a truthful and adequate statement of composition in accordance with section 34, Article III, of these regulations.

(b) Alteration of class or type shall be deemed to result from any of the following occuring before, during, or after production.

(1) Treatment of any class or type of wine with substances foreign to such wine which remain therein, *Provided*, That the presence in finished wine of not more than 350 parts per million (not more than 70 of such parts being in a free state) of total sulphur dioxide, or sulphites expressed as sulphur dioxide, shall not be precluded under this paragraph.

(2) Treatment of any class or type of wine with substances not foreign to such wine but which remain therein in larger quantities than are naturally and normally present in other wines of the same class or type not so treated.

(3) Treatment of any class or type of wine with methods or materials of any kind to such an extent or in such manner as to affect the basic composition of the wine so treated by altering any of its characteristic elements.

(4) Blending of wine of one class with wine of another class or the blending of wines of different types within the same class.

(5) Treatment of any class or type of wine for which a standard of identity is prescribed in this article with sugar or water in excess of the quantities specifically authorized by such standard, *Provided*, That where such wine is derived exclusively from fruit or other agricultural products the normal acidity of which is 20 parts or more per thousand, and such wine has been manufactured in accordance with the standard of identity therefor in all respects except that the volume of the product has been increased more than 35 per cent, but not more than 60 per cent, by the addition of sugar and water solution for the sole purpose of correcting natural deficiencies due to such acidity, the class or type shall not be deemed to be altered but there shall be stated, as a part of the class or type designation, the phrase "made with over 35 per cent sugar solution".

(c) Nothing in this section shall preclude the treatment of wine of any class or type in the manner hereinafter specified, provided such treatment does not result in the alteration of the class or type of the wine under the provisions of paragraph (b) of this section.

(1) Treatment with filtering equipment, and with fining or sterilizing agents.

(2) Treatment with pasteurization at the minimum temperature and for the minimum period necessary to accomplish practical stabilization, but not for the purpose of shortening the normal maturation period.

(3) Treatment with refrigeration at the maximum temperature and for the minimum period necessary to accomplish practical stabilization, but not for the purpose of shortening the normal maturation period.

(4) Treatment with methods and materials to the minimum extent necessary to correct cloudiness, precipitation, or abnormal color, odor, or flavor developing in wine.

(5) Treatment with constituents naturally present in the kind of fruit or other agricultural product from which the wine is produced for the purpose of correcting deficiencies of these constituents, but only to the extent that such constituents would be present in normal wines of the same class or type not so treated.

SEC. 23. *Grape type designations.*—(a) A name indicative of a variety of grape may be employed as the type designation of a grape wine if the wine derives its predominant taste, aroma, and characteristics, and at least 51 per cent of its volume, from that variety of grape. If such type designation is not known to the consumer as the name of a grape variety, there shall appear in direct conjunction therewith an explanatory statement as to the significance thereof.

SEC. 24. *Generic, semi-generic, and non-generic designations of geographic significance.*—(a) A name of geographic significance which is also the designation of a class or type of wine, shall be deemed to have become generic only if so found by the Administrator.

Examples of generic names, originally having geographic significance, which are designations for a class or type of wine are: Vermouth, Sake.

(b) A name of geographic significance, which is also the designation of a class or type of wine, shall be deemed to have become semi-generic only if so found by the Administrator. Semi-generic designations may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine.

Examples of semi-generic names which are also designations for types of grape wine are: Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine Wine (syn. Rock), Sauterne, Haut Sauterne, Sherry, Tokay.

(c) A name of geographic significance, which has not been found by the Administrator to be generic or semi-generic, may be used only to designate wines of the origin indicated by such name, but such name shall not be deemed to be the distinctive designation of a wine unless the Administrator finds that it is known to the consumer and to the trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines.

Examples of non-generic names which are not distinctive designations of specific wines are: American, California, Lake Erie Islands, Napa Valley, New York State, French, Spanish.

Examples of non-generic names which are also distinctive designations of specific grape wines are: Bordeaux Blanc, Bordeaux Rouge, Graves, Medoc, St. Julien, Chateau Yquem, Chateau Margaux, Chateau Lafite, Pommard, Chambertin, Montrachet, Rhone, Liebfraumilch, Rudesheimer, Forster Deidesheimer, Schloss Johannisberger, Lagrima, Lacryma Christi.

SEC. 25. *Appellations of origin.*—(a) A wine shall be entitled to an appellation of origin if (1) at least 75 per cent of its volume is derived from fruit or other agricultural products both grown and fermented in the place or region indicated by such appellation, (2) it has been fully manufactured and finished within such place or region, and (3) it conforms to the requirements of the laws and regulations of such place or region governing the composition, method of manufacture and designation of wines for home consumption.

(b) Wines subjected to cellar treatment outside the place or region of origin under the provisions of section 22 (c) of this article, and blends of wines of the same origin blended together outside the place or region of origin (if all the wines in the blend have a common class, type or other designation which is employed as the designation of the blend), shall be entitled to the same appellation of origin to which they would be entitled if such cellar treatment or blending took place within the place or region of origin.

3. Amend Article III, Section 33 (b), of said regulations to read:

(b) *Brand names of geographic significance.*—The word "brand" shall be stated in direct conjunction with, and in lettering at least one-half as large as, any geographic brand name which, either alone or by reason of any statement, design, or device appearing upon the label, tends to create the impression that the wine originated in a particular place or region, unless such wine is in fact of the origin indicated.

4. Amend Article III, Section 34, of said regulations to read:

SEC. 34. *Class and type.*—(a) The class of the wine shall be stated, and such statement shall be in conformity with article II of these regulations if the wine is defined therein, except that red, white, light and natural wines need not be designated as such. In the case of still grape wine there may appear, in lieu of the class designation, any grape-type designation, semi-generic geographic type designation, or geographic distinctive designation to which the wine may be entitled. In the case of champagne, the type designation "champagne" may appear in lieu of the class designation "sparkling wine". If the class of the wine is not defined in article II of these regulations, a truthful and adequate statement of composition shall appear upon the brand label of the product in lieu of a class designation. In addition to the mandatory designation for the wine, there may be stated a distinctive or fanciful name, or a designation in accordance with trade understanding. All parts of the designation of the wine, whether mandatory or optional, shall be in direct conjunction and in lettering substantially of the same size and kind.

(b) An appellation of origin such as "American", "California", "Chilean", "New York State" or "Spanish", disclosing the true place of origin of the wine, shall appear in direct conjunction with and in lettering substantially as conspicuous as the class and type designation, (1) if a grape variety name having geographic significance is employed as the type designation of the wine pursuant to section 23, (2) if a semi-generic type designation of geographic significance is employed as the type designation of the wine pursuant to section 24 (b), or (3) if the label bears any statement, design, device, or representation which indicates or infers origin.

5. Amend Article III, Section 39 (a), of said regulations by adding at the end thereof a new sub-paragraph to read:

(7) Any statement, design, device, or representation (other than a statement of alcoholic content in conformity with section 36) which tends to create the impression that the wine has been "fortified", or contains distilled spirits, or has intoxicating qualities, except that a statement of composition, if required to appear as the designation of a product not defined in article II of these regulations, may include a reference to the type of distilled spirits employed therein.

6. Amend Article III, Section 39, of said regulations by striking out paragraph "(j)" thereof, and by relettering paragraph "(k)" thereof to read "(j)".

7. Amend Article VI, Section 64 (a), of said regulations by adding at the end thereof a new sub-paragraph to read:

(8) Any statement, design, device, or representation (other than a statement of alcoholic content in conformity with section 62 C.) which tends to create the impression that the wine has been "fortified", or contains distilled spirits, or has intoxicating qualities, except that a statement of composition, if required to appear as the designation of a product not defined in article II of these regulations, may include a reference to the type of distilled spirits employed therein.

8. Amend Article VI, Section 64 (h), of said regulations to read:

(h) *Statements indicative of origin.*—No statement, design, device, or representation which tends to create the impression that the wine originated in a particular place or region, shall appear in any advertisement unless the label of the advertised product bears an appellation of origin, and such appellation of origin appears in the advertisement in direct conjunction with the class and type designation.

The provisions of Class 8, Section 21, Article II, of this amendment shall become effective one month after the date of filing with the Division of the Federal Register. All other provisions of this amendment shall become effective six months after the date of filing with the Division of the Federal Register.

[SEAL] W. S. ALEXANDER,
Administrator, Federal Alcohol Administration.

Approved, this 22nd day of August, 1938.

[SEAL] ROSWELL MAGILL,
Acting Secretary of the Treasury.

[F. R. Doc. 38-2496; Filed, August 25, 1938; 10:46 a. m.]

Notices

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 23rd day of August 1938.

[File No. 7-250]

IN THE MATTER OF APPLICATION BY THE SAN FRANCISCO STOCK EXCHANGE FOR CONTINUANCE OF UNLISTED TRADING PRIVILEGES IN PANTEPEC OIL COMPANY OF VENEZUELA, C. A., (A VENEZUELAN CORPORATION), CERTIFICATES OF DEPOSIT FOR CAPITAL STOCK, PAR VALUE ONE BOLIVAR

ORDER DENYING APPLICATION

Unlisted trading privileges on the San Francisco Stock Exchange in Pantepec Oil Company of Venezuela (Delaware), Capital Stock, $1.00 Par Value, having been continued pursuant to Rule JF7 of the Commission; and

Said Exchange, pursuant to paragraph (b) of Rule JF2, having applied to this Commission setting forth that there are being effected changes in said security other than those specified in paragraph (a) of said rule and asking the Commission to determine that said security after said changes is substantially equivalent to the said security heretofore admitted to unlisted trading privileges; and

The Commission having considered the matter;

It is ordered, Pursuant to Section 12 (f) and 23 (a) of the Securities Exchange Act of 1934, as amended, and Rule JF2 (b) promulgated thereunder, that the determination sought by said application be and the same is hereby denied.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 38-2501; Filed, August 25, 1938; 12:36 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 24th day of August, A. D. 1938.

[File No. 43-142]

IN THE MATTER OF LONE STAR GAS CORPORATION

ORDER CONCERNING ACQUISITION OF SECURITIES

Lone Star Gas Corporation, a registered holding company, having filed with this Commission an application and amendments thereto pursuant to Section 10 (a) (1) of the Public Utility Holding Company Act of 1935 for the approval of the acquisition by it of non-interest bearing stock notes from Texas Cities Gas Company and Council Bluffs Gas Company and the acquisition of 4½% notes due August 1, 1953 from Lone Star Gas Company, The Dallas Gas Company, County Gas Company, Texas Cities Gas Company and Council Bluffs Gas Company, all subsidiaries of said Lone Star Gas Corporation;

A hearing having been held on said application, as amended, after appropriate notice;[1] the record in the matter having been duly considered; and the Commission having filed its findings herein;

It is ordered, That the acquisition of the aforesaid securities in the manner set forth in the application, as amended, be and the same is hereby approved subject to the terms and conditions set forth in and for the purposes represented by said amended application;

It is further ordered, That within ten days after the acquisition of the securities above referred to, the applicant shall file with this Commission a Certificate of Notification showing that such acquisition was effected in accordance with the terms and conditions of and for the purposes represented by said amended application.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 38-2498; Filed, August 25, 1938; 12:36 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 24th day of August, A. D. 1938.

[File No. 43-142]

IN THE MATTER OF LONE STAR GAS CORPORATION

ORDER CONCERNING SALE OF SECURITIES

Lone Star Gas Corporation, a registered holding company, having filed an application and amendments thereto pursuant to Rule U-12D-1, promulgated under the Public Utility Holding Company Act of 1935, regarding the sale to the issuing subsidiary company of bonds now held by the applicant but issued by Texas Cities Gas Company, Council Bluffs Gas Company and The Dallas Gas Company all subsidiary companies of the applicant;

A public hearing having been held on said applications, as amended, after appropriate notice;[1] the Commission having considered the record in this matter and having made and filed its findings herein;

It is ordered, That the sale of such securities in the manner and subject to the terms set forth in such amended application be and the same is hereby approved.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 38-2499; Filed, August 25, 1938; 12:36 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 24th day of August, A. D. 1938.

[File No. 43-142]

IN THE MATTER OF LONE STAR GAS CORPORATION, LONE STAR GAS COMPANY, TEXAS CITIES GAS COMPANY, COUNCIL BLUFFS GAS COMPANY, THE DALLAS GAS COMPANY, AND COUNTY GAS COMPANY

ORDER CONCERNING EFFECTIVENESS OF DECLARATIONS

Lone Star Gas Corporation, a registered holding company, Lone Star Gas Company, Texas Cities Gas Company, Council Bluffs Gas Company, The Dallas Gas Company and County Gas Company, all subsidiaries of said holding company, having filed joint and combined declarations pursuant to Section 7 of the Public Utility Holding Company Act of 1935, regarding the issue and sale by each of said declarants of the following described securities:

Lone Star Gas Corporation

15 year 3½% Sinking Fund Debentures (due August 1, 1953) in the principal amount of $20,000,000;

1,460,000 shares of Common Stock without par value including Scrip Certificates in respect of fractional interests in shares, such stock to be issued solely upon conversion of the debentures by the holders thereof;

Bank Loan Notes aggregating $11,300,000.

Lone Star Gas Company

4½% Note due August 1, 1953 in the principal amount of $5,100,000;

Texas Cities Gas Company

Non-interest bearing stock note in the principal amount of $3,000,000;

4½% Note due August 1, 1953 in the principal amount of $2,438,270;

Council Bluffs Gas Company

Non-interest bearing stock note in the principal amount of $1,200,000;

4½% Note due August 1, 1953 in the principal amount of $42,375;

The Dallas Gas Company

4½% Note due August 1, 1953 in the principal amount of $3,653,360.

County Gas Company

4½% Note due August 1, 1953 in the principal amount of $1,680,000.

A joint hearing on these declarations, as amended, having been held after appropriate notice;[1] the Commission having duly considered the record in such matters and having filed its findings herein:

It is ordered, That such declarations be and become effective forthwith upon the condition, however, that the issue and sale of the aforesaid securities shall be effected in compliance with the terms and conditions set forth in and for the purposes represented by such declarations, as amended.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 38-2500; Filed, August 25, 1938; 12:36 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 24th day of August, A. D. 1938.

[File No. 43-142]

IN THE MATTER OF TEXAS CITIES GAS COMPANY, COUNCIL BLUFFS GAS COMPANY, THE DALLAS GAS COMPANY

ORDER CONCERNING ACQUISITION OF SECURITIES

Texas Cities Gas Company, Council Bluffs Gas Company and The Dallas Gas Company, subsidiary companies of Lone Star Gas Corporation, a registered holding company, having filed joint and combined applications and amendments thereto pursuant to Rule U-12C-1, promulgated under the Public Utility Holding Company Act of 1935, regarding the acquisition from Lone Star Gas Corporation, and the retirement thereafter by each of said applicants, of certain bonds

[1] 3 F. R. 1881 DI.

[1] 3 F. R. 1881 DI.

[1] 3 F. R. 1881 DI.

issued by such applicants and now held by said parent company;

A public hearing having been held on said applications, as amended, after appropriate notice;[1] the Commission having considered the record in this matter and having made and filed its findings herein;

It is ordered, That the acquisition by applicants of such securities in the manner and subject to the terms set forth in such amended applications be and the same is hereby approved.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 38-2497; Filed, August 25, 1938; 12:36 p. m.]

[1] 3 F. R. 1881 DI.